

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN WESTERN THOMAS,

Petitioner,

File No. 1:08-CV-307

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

_____ /

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Petitioner John Western Thomas's motion for leave to file a supplemental brief and attachments in support of his petition under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. (Dkt. No. 6.) Although Petitioner's motion for leave refers to a "supplemental brief," the brief is titled as an "amended brief" and is in substance an amended brief, not a supplemental brief.

A motion to amend a § 2255 motion is governed by Federal Rule of Civil Procedure 15. 28 U.S.C. § 2242; Rule 12, Rules Governing § 2255 Proceedings. The United States has not filed a response to Petitioner's § 2255 motion, so Petitioner may amend his pleading "once as a matter of course." Fed. R. Civ. P. 15(a)(1)(A). However, when a motion to amend a § 2255 motion is filed after the expiration of the statute of limitations the amendments must relate-back to the claims asserted in the original petition. *Mayle v. Felix*, 545 U.S. 644, 663-64 (2005). "An amendment to a pleading relates back

to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]” Fed. R. Civ. P. 15(c)(1)(B).

Petitioner was sentenced on February 22, 2006. The United States Supreme Court denied Petitioner’s petition for writ of certiorari filed in Petitioner’s criminal case on March 26, 2007. *Thomas v. United States*, 127 S. Ct. 1900 (2007). As Petitioner’s conviction became final on March 26, 2007, the last day for Petitioner to file a § 2255 motion was March 26, 2008. 28 U.S.C. § 2255(f)(1); *Robinson v. United States*, 416 F.3d 645, 649-50 (7th Cir. 2005) (collecting cases and concluding that a conviction is final under § 2255(f)(1) upon entry of the denial of certiorari on the Supreme Court’s docket).

Petitioner filed his § 2255 motion on March 26, 2008. Petitioner filed his motion to amend on April 10, 2008. Hence the amended brief and exhibits must relate-back to the claims in the original petition in order to comply with the statute of limitations.

Petitioner’s amended brief merely corrects grammatical and typographical errors. The four attached exhibits are all documents that support the claims asserted in Petitioner’s original petition. Thus the claims in the amended brief and the attached exhibits arise out of the same conduct, transactions, or occurrences set out in Petitioner’s original motion and brief.

Accordingly,

IT IS HEREBY ORDERED that Petitioner John Western Thomas's motion for leave to file a supplemental brief and attachments in support of his petition under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence (Dkt. No. 6.) is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk's Office is directed to file Petitioner's amended brief (Dkt. No. 6, Att. 1) and the supporting exhibits (Dkt. No. 6, Atts. 2-5).

Date: April 22, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE